

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 268 and 403

[EPA # 530-Z-96-002; FRL-5452-7]

RIN 2050-AD38

Land Disposal Restrictions Phase III--Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal and amendment of final rule.

SUMMARY: Elsewhere in this Federal Register, EPA is promulgating a final rule which, among other things, revises treatment standards for hazardous wastewaters that exhibit the characteristic of ignitability, corrosivity, reactivity, or toxicity. The revised treatment standards were promulgated to implement the mandate of the opinion of the Circuit Court of Appeals for the District of Columbia Circuit in *Chemical Waste Management (CWM) v. EPA*, 976 F. 2d 2 (D.C. Cir. 1992) cert. denied 507 U.S. 1057 (1993). On March 26, 1996, President Clinton signed into law the Land Disposal Program Flexibility Act of 1996 which, among other things, provides that the wastes in question are no longer prohibited from land disposal so long as they are not hazardous wastes at the point they are land disposed. By operation of the statute, this provision is made effective immediately and therefore essentially overrules this portion of the CWM opinion. EPA accordingly is incorporating the statutory provision into the regulations by amending and/or withdrawing the portions of the regulations that are superseded by the new legislation. The amendment/withdrawal of these standards does not affect any other part of the final rule; and the effective dates of the other actions in the final rule likewise will not change. Furthermore, EPA is amending parts of the LDR Phase II final rule, published on September 19, 1994 (59 FR 47982) which are also overruled by the legislation.

EFFECTIVE DATE: April 5, 1996.

>>>>61 FR 19117 (April 30, 1996) corrects this effective date to April 8, 1996.>>>>

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at 800-424-9346 (toll-free) or 703-412-9810 locally. For specific information on the LDR Phase III rule and this document, contact Peggy Vyas in the Office of Solid Waste, phone 703-308-8594.

>>>> The preamble has not been included in this file. <<<<

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. The amendments revising 40 CFR 148.1(b) and (d), 148.3, 148.4, 148.20(a) introductory text, 268.3, 268.40(e), 268.44(a), and 403.5(d); as well as the amendments amending 40 CFR 268.1(e), 268.9(d), and 403.5(c); as well as the amendments adding 40 CFR 148.18, 268.2(k) and (l), 268.9(e), (f), and (g), and 268.39 as published elsewhere in this issue of the Federal Register are withdrawn.

>>>> Part 148 has not been included because it is not required as part of a State's Hazardous Waste Program. <<<<

PART 268--LAND DISPOSAL RESTRICTIONS

5. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A--General

6. Section 268.1 is amended by removing and reserving paragraph (c)(3).

7. Section 268.3 is revised to read as follows:

§ 268.3 Dilution prohibited as a substitute for treatment.

(a) Except as provided in paragraph (b) of this section, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with subpart D of this part, to circumvent the effective date of a prohibition in subpart C of this part, to otherwise avoid a prohibition in subpart C of this part, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

(b) Dilution of wastes that are hazardous only because they exhibit a characteristic in a treatment system which treats wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act (CWA), or which treats wastes in a CWA-equivalent treatment system, or which treats wastes for the purposes of pretreatment requirements under section 307 of the CWA is not impermissible dilution for purposes of this section unless a method has been specified in § 268.40 as the treatment standard, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater.

(c) Combustion of the hazardous waste codes listed in Appendix XI of this part is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as

cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria (unless otherwise specifically prohibited from combustion):

(1) The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in § 268.48;

(2) The waste consists of organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;

(3) The waste, at point of generation, has reasonable heating value such as greater than or equal to 5000 BTU per pound;

(4) The waste is co-generated with wastes for which combustion is a required method of treatment;

(5) The waste is subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); or

(6) The waste contains greater than 1% Total Organic Carbon (TOC).

8. Section 268.39 is added to read as follows:

§ 268.39 Waste specific prohibitions--spent aluminum potliners; reactive; and carbamate wastes.

(a) On July 8, 1996, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K156-K161; and in 40 CFR 261.33 as EPA Hazardous Waste numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

(b) On July 8, 1996, the wastes identified in 40 CFR 261.23 as D003 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. This prohibition does not apply to unexploded ordnance and other explosive devices which have been the subject of an emergency response. (Such D003 wastes are prohibited unless they meet the treatment standard of DEACT before land disposal (see § 268.40)).

(c) On January 8, 1997, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

(d) On April 8, 1998, Radioactive wastes mixed with K088, K156-K161, P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, and U407, U409-U411 are also

prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(e) Between July 8, 1996, and April 8, 1998, the wastes included in paragraphs (a), (b), (c), and (d) of this section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(f) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(g) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal, and all requirements of this part 268 are applicable, except as otherwise specified.

9. Section 268.40 is amended by revising paragraph (e) to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

(e) For characteristic wastes (D001-D003, and D018-D043) that are subject to treatment standards in the following table ``Treatment Standards for Hazardous Wastes,' ' all underlying hazardous constituents (as defined in § 268.2(i)) must meet Universal Treatment Standards, found in § 268.48, ``Table UTS,' ' prior to land disposal as defined in § 268.2(c).

* * * * *

10. In § 268.40, Table § 268.40, as revised elsewhere in this issue of the Federal Register, is further amended by removing note 8 at the end of the table and by revising the entries for D001, D002, D003 and D018-D043 to read as follows:

* * * * *

Note: Amendments to the § 268.40 table "Treatment Standards for Hazardous Wastes" are not included in this file. Amendments to this table were made April 8, 1996 (61 FR 15565 and 61 FR 15660), June 28, 1996 (61 FR 33680) and July 10, 1996 (61 FR 36419). Because these Federal Register notices will be consolidated into a single checklist, Revision Checklist 151, the table has been compiled only once. The table combining the corrections of April 8, 1996 (61 FR 15565 and 61 FR 15660), June 28, 1996 (61 FR 33680) and July 10, 1996 (61 FR 36419) can be found in the file FR151-4.ZIP.

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